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IN THE

Supreme Court of the United States

OCTOBER TERM, A.D. 1962

No. 857

MYLES HARPER,

Petitioner.

vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

Petition For Writ Of Certiorari To The Supreme Court Of Illinois

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(Petitioner has furnished nine copies of the printed Record used in the Supreme Court of Illinois)

IN THE

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OCTOBER TERM, A.D. 1962

No.

MYLES HARPER,

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vs.

THE PEOPLE OF THE STATE OF ILLINOIS,

Respondent.

Petition For Writ Of Certiorari To The Supreme Court Of Illinois

To the Honorable Chief Justice and Associate Justices of the Supreme Court of the United States:

Your petitioner, Myles Harper, a citizen of the United States of America and resident of the State of Illinois, prays that a Writ of Certiorari issue to the Supreme Court of Illinois to review that Court's judgment of affirmance of the judgment of the Criminal Court of Cook County, Illinois that he is guilty of unlawful possession of narcotic

drugs in said County on November 17, 1960, contrary to the law of Illinois, and the sentence of him to imprisonment in the Illinois State Penitentiary for not less than four, nor more than ten years.

Petitioner prays that the said judgment of the Illinois Supreme Court and that of Criminal Court of Cook County may be reversed. In support of his prayer petitioner shows the following:

A. REFERENCE TO OFFICIAL REPORT OF OPINION OF COURT BELOW.

The opinion of the Supreme Court of Illinois, complained of herein, is reported in 21 Ill. 2nd 85, 185 N.E. 2nd 865.

B. STATEMENT OF THE GROUNDS UPON WHICH JURISDICTION OF THIS COURT IS INVOKED.

(1) The Opinion of the Supreme Court of Illinois affirming the judgment of the Criminal Court of Cook County was filed on September 28, 1962.

(2) A Petition for Rehearing was filed by petitioner on October 10, 1962, and said Petition was denied by the Supreme Court of Illinois on November 29, 1962.

(3) The statutory provisions conferring jurisdiction upon this Court to review the judgment of the Illinois Supreme Court, the highest Court of the State of Illinois, by way of Writ of Certiorari, are found in Section 1257, Title 28, United States Code Annotated. The particular portion of said Section 1257 under which jurisdiction of this court is invoked is as follows:

> "* * * Where any title, right, privilege or immunity is specially set up or claimed under the Constitution * * * of * * * the United States."

Jurisdiction of this Court is also invoked under and pursuant to the due process clause of the Fourteenth Amendment to the United States Constitution, as the same prohibits the State of Illinois from depriving petitioner of rights guaranteed him by the Fourth Amendment to the United States Constitution, and as the same confers power upon this Court to prevent and overturn any such deprivation.

Petitioner's claim is that his right to freedom from unreasonable search of his person and property by police officers of the State of Illinois and City of Chicago as guaranteed by the Fourth Amendment, has been violated by police officers of the City of Chicago and State of Illinois. His further claim is that prosecuting officials of the State of Illinois introduced into evidence against him, and the Criminal Court of Cook County received in evidence against him, the fruits of the aforesaid violation contrary to the due process clause of the Fourteenth Amendment (as in *Mapp* v. *Ohio*, 81 S. Ct. 1684, 367 U.S. 643). On review, the Illinois Supreme Court condoned and affirmed the unconstitutional acts of the said officials and Criminal Court and the unconstitutional invasion of petitioner's rights.

The rules of this Court affecting this petition and pursuant to which it is filed are:

Rule 19, which sets forth one character of reason for granting certiorari as:

> "(a) Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this Court";

Rule 22, which provides for filing of certified transcript of record of State Court pursuant to Rule 21, and of Petition for Certiorari, within 90 days from entry of judgment. Into this rule the provision of Title 28, Section 2101 (c) United States Code Annotated are incorporated, and that, as interpreted in *Citizen's Bank of Michigan City Indiana* v. *Opperman*, 39 S. Ct. 330, 249, U.S. 448, allows petition for certiorari to be filed within 90 days from denial of petition for rehearing, as in case at bar;

Rule 23, which prescribes the form and contents of petition.

C. QUESTIONS PRESENTED FOR REVIEW.

(1) What is the distinction, if any, in the practical application of the Search and Seizure Provisions of the Fourth Amendment to searches of fixed premises and searches of movable vehicles?

(2) What is the language of the decision of this Court in *Carroll* v. *United States*, 267 U.S. 132, that the decision in *United States* v. *Di Re*, 332 U.S. 581, 68 S. Ct. 22, suggests might be used to make a distinction between what is a reasonable search as applied to a residence or fixed premises and what is a reasonable search of an automobile in the absence of legislation?

(3) Should a distinction exist in what is a reasonable search of an automobile and what is a reasonable search of a fixed premises because of the mobility of the former and the immobility of the latter?

(4) Is an arrest or attempted arrest of a person by a police officer without a warrant for suspected unlawful transfer of a narcotic drug lawful in Illinois, where that

officer's only knowledge is that a small package of unidentified, untested white powder is contained in the package he believes to have been transferred?

(5) Would the fact the arresting officer had previously charged the same person he believed to have received the package referred to in question 4 above with possession of a narcotic drug, render the arrest of the suspected transferor valid?

(6) In determining whether or not a subsequent search without warrant of the automobile of the suspected transferor of narcotic drugs is reasonable within the meaning of the Fourth Amendment, is this Court bound by Illinois court rulings and statutes as to what constitutes a lawful arrest, or, is this Court empowered by the Fourteenth Amendment to determine what kind of state arrest shall render a subsequent search without warrant reasonable as incidental to the arrest?

(7) If this Court can determine and prescribe what kind of state arrest renders an incidental search reasonable within the meaning of the Fourth Amendment, what are the criteria of the validity of such supporting arrest, and does the arrest of petitioner in the case at bar satisfy those criteria?

(8) Is the Illinois rule that a defendant, when seeking to prevent the admission of evidence against him as unlawfully obtained, cannot urge the violation of the constitutional rights of another in the chain of events connected to and resulting in the ultimate obtainment of the evidence to be offered against him, consistent with the command of the Fourth Amendment as imposed upon the states through the Fourteenth?

(9) Can evidence obtained by unreasonable search of and seizure from one person, justify a subsequent arrest and search of another person or his property without warrant, and render that second arrest search and seizure without warrant reasonable and outside the prohibition of the Fourth Amendment?

(10) Does the fact that the prior unlawful arrest and search of another person is part of the immediate investigation of the defendant and that other person as in the case at bar, render the arrest and search of the defendant or his property, based upon what was found as a result of that prior unlawful arrest and search, unreasonable?

(11) Does looking into an automobile through an open door, reaching into it and removing packages from it, constitute a search of the automobile by a police officer investigating it?

(12) Does the Fourth Amendment prohibit unreasonable seizure of property as well as unreasonable search?, and is the unreasonable seizure of packages from a parked automobile as offensive to the Fourth Amendment as unreasonable search of, and seizure from it?

(13) Does the Fourteenth Amendment require that evidence unlawfully seized by an officer from the property of a person, even without search of that property, require the suppression of that evidence at a criminal trial upon timely application?

(14) Does the opening and examination of packages seized from a person's property, constitute a search of his effects within the meaning of the Fourth Amendment?

(15) What constitutes abandonment of an automobile? Is an automobile properly characterized as abandoned that

is recently used and occupied and lawfully parked in a parking lot?

(16) Can the seizure of contraband be characterized as a seizure of contraband in "plain view", where the alleged contraband is enclosed in packages and the seizing officer has no knowledge of the contents of the packages?

D. CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED IN THE CASE.

Fourth Amendment to United States Constitution:

> "The right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no Warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized."

Fifth Amendment to the United States Constitution:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

Fourteenth Amendment to the United States Constitution, Sec. 1:

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law

which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

Article II Section 6 Illinois Constitution:

"The right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated; and no warrant shall issue without probable cause, supported by affidavit, particularly describing the place to be searched, and the persons or things to be seized."

Paragraph 657, Chapter 38, Illinois Revised Statutes, (1959):

"An arrest may be made by an officer or by a private person without warrant, for a criminal offense committed or attempted in his presence, and by an officer, when a criminal offense has in fact been committed, and he has reasonable ground for believing that the person to be arrested has committed it."

Section 192.28-24 Chapter 38 Illinois Revised Statutes (1959):

"* * *, Officers and employees of the Division[1] and other law enforcement officers whose duties are to enforce this Act[2] may make arrests without warrants for violations of this Act where the violation is committed in the presence of the person making the arrest or where such person has reasonable grounds to believe that the person to be arrested has committed or is committing such violation."

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[1] Division of Narcotics Control, State of Illinois.

[2] Uniform Narcotic Drug Act of Illinois, Ch. 38, Sec. 192.28-1 et seq., Ill. Rev. Stats., 1959.

Section 192.28-38, Ch. 38 Illinois Revised Statutes (1959):

> "* * *. Whoever violates this Act by possessing, having under his control, manufacturing, or compounding any narcotic drug shall be fined for the first offense not more than $5,000 and be imprisoned in the penitentiary for a period of not less than 2 years or more than 10 years. * * *."

E. FACTS IN THE CASE MATERIAL TO THE QUESTIONS PRESENTED AND STATEMENT OF THE MANNER IN WHICH THE FEDERAL QUESTIONS SOUGHT TO BE REVIEWED WERE RAISED

A Cook County Illinois Grand Jury charged in an indictment (No. 60-3578) that petitioner possessed, on October 14, 1960, a quantity of heroin, a narcotic drug contrary to statutes of Illinois (A. 1).[1] Petitioner pleaded not guilty.

On January 11, 1961, approximately four months before his trial, petitioner filed a sworn petition to Suppress Evidence (A. 2), and the court heard testimony and argument thereon (A. 34, 5). His motion to suppress evidence was denied (A. 43, 5). The evidence that petitioner had prayed to be suppressed, i.e. a white powdered substance contained in 2 packages found on the floor of his parked and vacant automobile, and information obtained as a result of an attempted arrest of him and the search of his said automobile on October 11, 1960, was testified about, described and received in evidence against defendant (A. 8, 20, 25).

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[1] "A" indicates Abstract of Record in Criminal Court of Cook County which was printed and used in Supreme Court of Illinois.

The facts stated and claims made in the petition to suppress are, in capsule, as follows: (Beginning A. 2)

On October 11, 1960, as petitioner drove his automobile from a parked position in 47th Street toward the intersection of 47th Street and South Parkway in Chicago, Illinois, an unknown man produced and fired a revolver at him. An automobile occupying men, whom he later learned to be police officers, pursued his automobile. He drove his automobile into a parking lot and fled afoot. The pursuing officers searched his automobile and obtained a certain white powdered substance, articles and information which they and other officials of Chicago, Cook County and the State of Illinois intended to use as evidence against him at the trial of the cause. The said search of his automobile was made by the officers without a warrant and "without seeing your petitioner do or attempt to do any act or thing which was in violation of any laws of the United States of America, State of Illinois or any ordinances of the City of Chicago, and when no crime had in fact been committed for the commission of which they had reasonable ground to believe that your petitioner had committed it." The arrest of petitioner and search of his automobile were without lawful authority, and in violation of his rights guaranteed by the Fourth Amendment to the United States Constitution and Article II Section 6 of the Constitution of Illinois. The arrest of petitioner was in violation of Section 657, Ch. 38, Illinois Revised Statutes of 1955. Permission to officials of Chicago and the State of Illinois to introduce the evidence so obtained at the trial of the petitioner, would violate rights guaranteed to him by the Fifth Amendment to the United States Constitution. The consitutional and statutory provisions are set out in the petition.

At the hearing of the petition to suppress evidence, Chicago Police Officer, Emmons Russell, who had attempted to arrest petitioner on 47th Street and who searched his automobile in the parking lot, and who there found and seized the 2 packages later found to contain a white powder, gave, under oath, the following account of the attempted arrest and the search: (Beginning A. 34)

On October 11, 1960, at 10:30 P.M. he saw petitioner seated behind the steering wheel (A. 38) of an automobile on 47th Street about 100 feet east of South Parkway (A. 38, 34). He saw a woman named Eileen Walker[1] standing next to and talking to a man on the Street (A. 37). He did not hear their conversation. He then saw Eileen Walker leaning into petitioner's auto with her hands inside it (A. 38). She and petitioner had a conversation which he did not hear (A. 34). As he looked into the automobile through a side window (A. 38) while in a position some five to ten feet away (A. 35) he saw petitioner hand Eileen Walker a small paper bag just large enough to fit into her hand (A. 38, 35). Eileen Walker tucked the package in her waistband and crossed to the other side of the street. He did not know what the package was nor what was in it at this time (A. 38, 35). He had not observed petitioner do anything else up to this point (A. 35). He then followed and met Eileen Walker across the street from petitioner's automobile, stopped her and received a package (A. 39, 35). He found that the package he received from Eileen Walker contained a white powder (A. 35, 39). He made no field test of the powder at this time but inspected it, saw that

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[1] Eileen Walker is sometimes referred to as Alean Walker and Allene Walker in the record of the Criminal Court of Cook County.

it was a white powder (A. 39) and placed her under arrest (A. 35, 39). When first arrested Eileen Walker refused to answer any questions (A. 37). He then drew his gun and approached petitioner's automobile to stop him and question him (A. 35). He did not "announce himself" when he drew his gun or say anything to petitioner (A. 35). He did not fire the gun. He signalled his partner to help him apprehend petitioner. Petitioner sped away westward through a red light. He and Eileen Walker entered a squad car occupied by other officers, and the squad car pursued petitioner's automobile. A few blocks away he saw petitioner's automobile in a parking lot with the doors open and ignition on (A. 36, 39). He entered the parking lot, searched the car and found and seized two packages from the floor on the passenger side (A. 36). The packages were not concealed in any way. They contained a white powder. Petitioner surrendered himself to the police two or three days later (A. 37). After he had been in the parking lot, Eileen Walker had told him that she had not received the package, which she had handed him, from petitioner (A. 37). He had never met petitioner before. He had arrested Eileen Walker in September of 1960 and had charged her with possession of heroin. He charged her with possession of heroin because of the package he took from her on October 11, 1960, but she had been discharged in court (A. 39).

An Illinois Narcotic Inspector and another Chicago policeman, Clemie Paschal, testified that they were the other officers in the automobile with Officer Russell and Eileen Walker when it pursued the automobile of petitioner. Neither of them had taken part in the arrest of Eileen Walker, or in the search of petitioner's automobile in the parking lot (A. 40-43). Officer Paschal testified that he

had no warrant for the arrest of petitioner or for the search of his automobile, and that he had participated in the attempted arrest of petitioner because "he might be engaged as a narcotic peddler" (A. 42). He had never arrested petitioner for, nor, had he ever seen him sell narcotics.

The Court ruled that considering what the witnesses said, they had reasonable ground to suspect something was going on and to make the arrest (A. 43). The motion to suppress evidence was denied.

In the prosecution of a writ of error in the Illinois Supreme Court, petitioner argued that the trial court's denial of his motion to suppress evidence constituted reversible error. He framed his point as follows:

"4. The trial court erroneously denied defendant's motion to suppress as evidence the narcotics found during the search without warrant, of his parked and empty automobile.

a. The search of the automobile was not justified as incidental to an arrest.

b. The search of the automobile was not justified by any facts sufficient to afford the searching officer with reasonable grounds to believe defendant was committing a crime therein at the time of the search.

c. One reason advanced to justify the search, that is that defendant had dispensed narcotics to Alean Walker on 47th Street, was judicially determined to be non existent before defendant made his motion to suppress and defendant was not indicted for this alleged dispensing.

d. The arrest and search of Alean Walker without a warrant prior to the search of defendant's auto was during what was in effect an investigation of defendant and her jointly and the unlawful search of her

rendered the subsequent search of defendant's automobile also unlawful as an extension thereof.

People v. *Clyde Burnett*, 20 Ill. 2d 624;
Harris v. *U. S.*, 331 U.S. 145;
People v. *Albea*, 2 Ill. 2d 317;
50 A.L.R. 2d 582;
People v. *Perry*, 1 Ill. 2d 482;
People v. *Humphreys*, 353 Ill. 340;
People v. *Henneman*, 373 Ill. 603;
People v. *Tillman*, 1 Ill. 2d 525.

The said point 4 is argued at page 31 of petitioner's brief and argument. (b)

After affirmance of the judgment against him, petitioner filed a Petition For Rehearing in the Illinois Supreme Court (c) in which he framed his point as follows:

"IN ITS CONSIDERATION OF PETITIONER'S CLAIM THAT THE TRIAL COURT ERRED IN DENYING HIS MOTION TO SUPPRESS EVIDENCE, THE COURT OVERLOOKED IMPORTANT FACTS APPEARING IN THE RECORD AND MISAPPREHENDED PORTIONS OF THE RECORD DISCUSSED IN THE ARGUMENT UNDER POINT 4 OF PETITIONER'S BRIEF."

In the argument in the petition for rehearing, petitioner urged the fact that arresting officer Russell did not know what the package allegedly handed by petitioner to Eileen Walker contained; did not know that the white powder in

(b) Petitioner's Brief and Argument appears at page *3-B* of the Record of the Supreme Court of Illinois filed with this petition.

(c) Petition for Rehearing appears at page *12* of the Illinois Supreme Court Record filed with this petition.

the package he received from Eileen Walker was a narcotic drug; did not know that the package received from Eileen Walker was the same package allegedly handed to her by petitioner; and did not know that the two packages he saw on the floor of defendant's automobile contained a narcotic drug at the time he seized them. Petitioner further argued that the illegal arrest and search of Eileen Walker was so inseparable from the attempted arrest of petitioner that they constituted the same transaction, and that the illegality of the first part rendered the second part of the arrest of the two of them illegal. Petitioner also argued that the petitioner's automobile was legally parked in a parking lot at the time of the search of it, and that it was not "abandoned" as it was characterized by the Illinois Supreme Court.

The Petition for Rehearing was denied and an Order of Affirmance issued but stayed until the disposition of this Petition for Writ of Certiorari.

F. ARGUMENT AMPLIFYING THE REASONS RELIED ON FOR ALLOWANCE OF THE WRIT.

1.

That the introduction in a State criminal trial of evidence obtained by search and seizure in violation of the Fourth Amendment to the United States Constitution, constitutes a denial of due process guaranteed by the Fourteenth Amendment, is clearly and firmly established by the decision of this Court in *Mapp* v. *Ohio*, 81 S. Ct. 1684, 367 U.S. 643. In that case this Court said (p. 654):

> "Since the Fourth Amendment's right of privacy has been declared enforceable against the States through the Due Process Clause of the Fourteenth, it is enforceable against them by the same sanction of exclusion as is used against the Federal Government."

"Today we once again examine *Wolf's*[c] constitutional documentation of the right to privacy free from unreasonable state intrusion, and, after its dozen years on our books, are led by it to close the only courtroom door remaining open to evidence secured by official lawlessness in flagrant abuse of that basic right, reserved to all persons as a specific guarantee against that same unlawful conduct. We hold that all evidence obtained by searches and seizures in violation of the Constitution is, by that same authority, inadmissible in a state court."

Mapp, although itself confined to a consideration of evidence obtained in violation of the Fourth Amendment, by its holding, and by plain and necessary implication, commands exclusion of evidence obtained in violation of the privilege against self incrimination guaranteed by the Fifth Amendment.

Illinois law has long embraced the exclusionary rule and the Illinois Constitution adopted in 1870 guarantees freedom of persons within Illinois jurisdiction from unreasonable search and seizure of their persons and their property. (Article II, Section 6 Illinois Constitution, 1870; *People* v. *Albea*, (1954) 2 Ill. 2nd 317, 118 N.E. 2nd 277[d]; *People* v. *Burnett*, (1960) 20 Ill. 2nd 624, 170 N.E. 2nd 546; *People* v. *Mayo*, (1960) 19 Ill. 2nd 136, 166 N.E. 2nd 440).

(c) The holding in *Wolf* (*Wolf* v. *Colorado*, 338 U.S. 25) is that the rule of exclusion of evidence obtained in violation of the guaranty of the Fourth Amendment against unreasonable search and seizure would not be imposed upon the States through the Fourteenth Amendment.

(d) "Illinois has steadfastly adhered to the theory of inadmissibility of evidence obtained by illegal search." *People* v. *Albea*, 2 Ill. 2nd 317, 118 N.E. 2nd 277.

2.

After correctly observing that neither the State and Federal Constitutions, nor the decisions of the Supreme Court of Illinois and of the United States afford a fixed formula by which the reasonableness of a search may be resolved, (*Go-Bart Importing Co.* v. *United States*, 282 U.S. 344, 75 L. Ed. 374 is cited here), the Illinois Supreme Court proceeded to hold the search of petitioner's automobile in the case at bar to be reasonable and permitted by both constitutions (See p. 5a hereof). We respectfully submit that the language used by the Illinois Court to justify the attempted arrest, and the search for and seizure of evidence, and the admission of the evidence sought to be suppressed, is ambiguous. An outline of the Court's reasons, in the order that they are set forth in the opinion, is as follows:

1. The evidence was found in "full view in an open abandoned car used by" petitioner "in fleeing from the police," and the police had previously seen him hand a packet similar to those found in the car to Eileen Walker.

2. No question exists that the police had reasonable cause to pursue and, if possible, to arrest petitioner and to search him and the items in his immediate control if he had been caught.

3. "Upon finding the open car abandoned by the fleeing defendant, we think it reasonable that the police in performance of their duties would look into the car to determine if there was anything there to identify defendant, or any paraphernalia of the suspected narcotics traffic."

4. "An abandoned motor vehicle does not have the same sanctity as a defendant's dwelling house in the constitutional field of search and seizure."

5. The motion to suppress was properly denied because "'it is not a search to observe what is open and patent.'"

6. Neither petitioner's motive in fleeing the police "nor the legality of Miss Walker's arrest and search have any bearing on the reasonableness of the conduct of the police in this case."

Realizing that we are here primarily concerned to show reasons why this Court should grant certiorari, we will discuss the Six Reasons of the Illinois Court out of the order in which they are stated in the opinion and in an order that better serves our said primary concern.

a.

In Reason No. 4 the Illinois Supreme Court states, in effect, that the prohibition of the Fourth Amendment against unreasonable search and seizure is entitled to somewhat less respect when the search is of an automobile than when it is of a dwelling. In support of this proposition the cases of *People* v. *Tabet*, 402 Ill. 93, 83 N.E. 2nd 329, and *People* v. *Grod*, 385 Ill. 584, 53 N.E. 2nd 591 are cited. *Tabet* in no way supports the proposition. The holding there is that automobiles are not immune from reasonable search because an Illinois Statute providing for the issuance of warrants to search automobiles, set forth only pistols, revolvers or other firearms as the object of the search authorized by the warrants. *Grod* involved the search of a dwelling house and its holding is that the search of a dwelling house without a warrant is unreasonable as a matter of law, whereas, search of a person or vehicle without

a warrant may be reasonable or unreasonable depending on the circumstances. This *obiter dictum* of *Grod* touches upon a possible distinction in the law of what would constitute an unreasonable search of a dwelling and what would constitute an unreasonable search of an automobile. The lines of this possible distinction have not been made clear by the Supreme Court of Illinois, and, indeed, appear to have not yet been drawn by this Court.

In *Chapman* v. *United States*, 365 U.S. 610, 81 S. Ct. 776, among the reasons this Court gave for holding that the search of a house for alcoholic beverages without a warrant was unlawful, appear the following:

> "No suspect was fleeing or likely to take flight. The search was of a permanent premises, not of a movable vehicle. No evidence or contraband was threatened with removal or destruction, except the fumes which we suppose in time would disappear."

These above words of *Chapman* were taken from *Johnson* v. *United States*, 333 U.S. 10.

However, in *United States* v. *Di Re*, 332 U.S. 581, 68 S. Ct. 222, in rejecting the contention that the arrest of and search of the person of *Di Re* was justified as an incident of a "lawful" prior search of his automobile without a warrant, this Court pointed out that the belief that an automobile is more vulnerable to search without a warrant than other property, has its source in the decision in *Carroll* v. *United States*, 267 U.S. 132. After demonstrating that the search of the automobile in *Carroll*, was made and held to be valid under the search and seizure provisions of the National Prohibition Act alone, this Court said:

> "Obviously the Court should be reluctant to decide that a search thus authorized by Congress was unreasonable and that the Act was, therefore unconstitu-

tional. In view of the strong presumption of constitutionality due to an Act of Congress, especially when it turns on what is "reasonable", the *Carroll* decision falls short of establishing a doctrine that, without legislation, automobiles nonetheless are subject to search without warrant in enforcement of all federal statutes. This Court has never yet said so. The most that can be said is that some of the language by which the Court justified the search and seizure legislation in the *Carroll* case might be used to make a distinction between what is a reasonable search as applied to an automobile and as applied to a residence or fixed premises, even in the absence of legislation."

The opinion in *Di Re* suggests a future expression by the Court of the lines of distinction between a reasonable search of fixed premises and a reasonable search of vehicles. Our search has revealed no such expression subsequent to *Di Re*. New York Courts were confused as to the distinction if any, as shown in *Di Re*, and Illinois Courts are obviously equally confused in the case at bar. The Illinois Supreme Court in the case at bar suggests a distinction, nowhere defines it, and, as shown, bases its suggestion on one case not in point, and on a meaningless *obiter dictum* in another.

In *People* v. *Watkins* (1960), 19 Ill. 2nd 11, 166 N.E. 2nd 433, a majority of the members of the Illinois Supreme Court overruled two other Illinois cases which held that a valid arrest whatever the circumstances, rendered reasonable the search of the arrestee and the automobile under his control without any warrant therefor.(1) The

(1) *People* v. *Clark*, 9 Ill. 2nd 400, 137 N.E. 2nd 820 and *People* v. *Berry*, 17 Ill. 2nd 247, 161 N.E. 2nd 315 were overruled to the extent that they without qualification permitted search of a person and his automobile upon a valid arrest.

Court held that the bare fact of valid arrest did not always render such search reasonable. One Justice, concurring specially, condemned the abandonment of the rule of thumb by the majority in *Watkins*. At the same term, a majority of the Illinois Supreme Court held that the search of an automobile after a valid arrest of the driver under the circumstances of the case, was unreasonable. (*People* v. *Mago*, 19 Ill. 2nd 136, 166 N.E. 2nd 440) In neither of these cases did the majority recognize greater sanctity of a dwelling house than that of an automobile in the field of search and seizure as announced by the same court in the case at bar. The same justice who specially concurred in *Watkins* dissented in *Mago*, but he did not suggest a different application of the constitutional prohibition against unreasonable search to fixed premises and to vehicles. Certiorari should be granted in the case at bar to determine if a distinction exists, and if so, what the distinction is, and what tests determine it.

b.

In Reason No. 2 for its holding in the case at bar, the Illinois Supreme Court found that no question existed of the right of the police officers to have pursued petitioner, to have arrested him, if possible, and to have searched him and the items under his control. *People* v. *Watkins*, 19 Ill. 2nd 11, 166 N.E. 2nd 433, is cited in the Opinion as precedent in support of these propositions. It is respectfully submitted that *Watkins* does not justify the conclusion of the court under the particular facts and circumstances of the case at bar.

We respectfully submit that a serious question exists on the right of Officer Russell to draw his gun and attempt to arrest petitioner in his automobile on 47th Street. At the

moment of his attempt there, he was possessed of following facts alone:

1. He had seen petitioner hand a small package to a woman.

2. He had taken a package from the woman and, upon examination, he had found that it contained a white powder.

3. He had arrested the woman about one month before, and he had charged her with illegal possession of drugs at that time.

At that same moment, he was belabored of the following ignorance:

1. He had never met petitioner before, and no suggestion appears that he had any information to support any belief that petitioner was engaged in any illegal activity, or about to so engage himself.

2. He did not observe petitioner commit any unlawful act known to him to be unlawful.

3. He did not know what, if anything, was contained in the package petitioner handed to the woman.

4. He did not know that the package he received from the woman was the same package he saw petitioner hand to her.

5. He did not know that the white powder in the package he received from the woman contained a narcotic drug or any substance prohibited by law.

6. He did not know that the woman had possessed narcotic drugs when he arrested her one month before. (This ignorance is negatively established by his failure to testify that she did possess narcotic drugs at the time of her prior arrest and failure to show the basis of his knowledge. His testimony is only that

he charged her with possession of heroin. Nothing appears to establish that the charge was true.)

It thus appears that the officer had no reasonable grounds to attempt the arrest of petitioner without a warrant, or to search him or his car. He had many reasons not to arrest petitioner.

If the officer had no right to arrest petitioner on 47th Street, then he had no right to pursue his automobile and no right to search it or seize anything from it in the parking lot as an incident of the attempted arrest.

Although the facts indicate that petitioner did not know that Russell was a police officer when Russell drew his gun on 47th Street, if he had known, he had every right to attempt to avoid the unlawful arrest by fleeing, and his flight cannot relate back to make the attempted arrest lawful nor does it seem just that his flight from the attempted unlawful arrest can justify and make reasonable the subsequent search of his automobile in the parking lot.

In *United States* v. *Di Re*, 332 U.S. 581, 68 S. Ct. 222, this court held that "in the absence of an applicable federal statute the law of the state where the arrest without warrant takes place determines its validity."

Paragraph 657, Chapter 38, Illinois Revised Statutes, 1959, provides:

> "An arrest may be made by an officer or by a private person without warrant, for a criminal offense committed or attempted in his presence, and by an officer, when a criminal offense has in fact been committed, and he has reasonable ground for believing that the person to be arrested has committed it."

Both the Supreme Court of Illinois and this Court, with some qualification, adhere to the rule that a search without warrant that is incidental to a valid arrest, is reasonable within the meaning of the Fourth Amendment. *United States* v. *Di Re*, 332 U.S. 581, 68 S. Ct. 222. But the search of the person of defendant in *Di Re* by officers in the State of New York, was held to be unreasonable where it did not appear that the arrest was lawful. New York law, similar to the Illinois Statute quoted above, permitted arrests for misdemeanors without warrants where committed in the presence of arresting officers, and permitted arrests for felonies where the officer had reasonable grounds to believe the arrestees had committed them. Di Re rode in an automobile with a person whom, the officers had been informed, had arranged to sell counterfeit stamps to their informer.

This Court held that under New York law the arrest of Di Re without warrant was invalid, and the conviction of him based upon a search after the invalid arrest could not stand. The officer in *Di Re* had as reasonable or better ground for arrest of Di Re than the officers in the case at bar. Neither possessed reasonable ground and neither satisfied the requirements of law of their respective states establishing the criteria of validity of arrests without warrant.

Section 192.28-24 Illinois Revised Statutes, 1959 permitting arrests for narcotics violations without warrant where the arresting officer "has reasonable grounds to believe that the person to be arrested has committed or is committing such violation", in no way enlarges the field of permissible arrest established by above quoted paragraph 657.

c.

The No. 6 Reason of the Illinois Supreme Court for its affirmance of the order of the criminal court denying petitioner's motion to suppress, of itself, alone, impels certiorari. The court's statement that petitioner's motive for fleeing has no bearing on the reasonableness of the conduct of the police, tends to confirm that the court believed that the alleged flight is and of itself justified the search of petitioner's automobile when it was observed in the parking lot. This would be a most unjust result if petitioner was in fact fleeing an unlawful attempt to unlawfully restrain him. It would also be most unjust if the unlawful conduct of the officers should go unpenalized by exclusion of the evidence ultimately discovered merely because of the intervention of petitioner's flight—especially where petitioner had in fact been placed in fear of his life by a person who had not announced himself to be a police officer, and who had not stated the reason that he had drawn and pointed a firearm in petitioner's direction.

The court's further statement that the legality of the arrest and search of the woman, has no bearing on the reasonableness of the conduct of the police demands certiorari. The reasonableness of the conduct of the officers is not the issue. The illegality and lawlessness of the conduct of the officers is the issue.

The investigation of petitioner began with the observation by officer Russell of his handing a package to the woman. When officer Russell followed the woman across the street, he was not only investigating the woman, but he was investigating petitioner at the same time. When he stopped the woman, inquired of her about the package

she had received from petitioner, received a package from her which he examined, he was investigating petitioner as well as the woman. When he thereupon arrested the woman, and drew his gun and approached petitioner with the woman in his custody, he was completing the investigation of petitioner and the woman and their transaction in petitioner's automobile.

It should not be the law that because the officer chose to arrest the woman first, which arrest was clearly unlawful, that petitioner cannot urge the unlawful arrest and seizure of a package from her as a violation of his own constitutional protection against unlawful arrest and search and seizure in what was at all times partly an investigation of him. The two transactions were in actuality one transaction, but are separated by the Illinois Court in a manner that, in their opinion, relieved the officer of the consequences of his violation of the constitutional rights of one of the objects of his illegal intrusion.

In *Silverthorne Lumber Company* v. *United States*, 251 U.S. 385, where prosecutors sought to obtain evidence that had been unlawfully seized, and that had been impounded by the court, for use in its presentment of its case before a Grand Jury, this Court said:

> "The essence of a provision forbidding the acquisition of evidence in a certain way is that not merely evidence so acquired shall not be used before the court but that it shall not be used at all."

Use of evidence received upon the unlawful arrest and search of the woman in the case at bar to justify the attempted arrest of petitioner, is the use of evidence acquired in a way forbidden by the constitution. And, if the attempted arrest of petitioner cannot be justified thereby,

then the search of his automobile cannot be justified as an incident of the unlawful attempted arrest and pursuit of him.

In his brief in the Illinois Supreme Court, petitioner urged that the decision of that court in *People* v. *Perra*, 1 Ill. 2nd 482, be overruled to the extent that it held that an accused has no standing to prevent the admission of evidence against him, that had been obtained by an unlawful search and seizure which did not infringe upon his own personal rights protected by the constitution. The unlawful search and seizure in *Perra* was not interwoven with the arrest of defendant as in the case at bar. But the opinion in the case at bar implies that the *Perra* principle is absolute. Justice and effective enforcement of the protection of the Fourth Amendment require an expression of this Court on the subject.

Reasons No. 1, No. 3 and No. 5 advanced by the Supreme Court of Illinois in support of its judgment that petitioner's motion to suppress was properly denied, may be discussed together. In Reasons No. 1 and No. 3, the automobile of petitioner which was found in a parking lot after the pursuit, is characterized by the court as having been "open and abandoned." The evidence is that one door or both doors of the automobile were open at the time it was observed in the parking lot. How far they were open is not revealed. The Court erroneously states that the motor was running. The evidence on the motion to suppress is that the ignition was on. (A. 36)

There is no evidence that the automobile was illegally in the parking lot. There is evidence that petitioner had just used it to get to the lot and had only recently parked it there. Under the circumstances the automobile was not

"abandoned" and certainly not "abandoned" in any sense that could make a search of it reasonable by reason of abandonment alone.

In Reason No. 5 the court states that the motion to suppress was properly denied because "it is not a search to observe that which is open and patent". The quotation was taken from *People* v. *Exum*, 382 Ill. 204, 47 N.E. 2nd 56, and that case is cited as authority for the proposition. *Exum* is not in point. In that case the officers saw a key cutting machine and camera on the front seat of an auto. They were not required to open a package to discover and identify its contents as in the case at bar. If an officer seized even an immediately identifiable object from a car, without knowing that it was the fruit of some unlawful enterprise of which he had knowledge until after the seizure, the seizure would be unconstitutional and the evidence should be suppressed. The only possible exception to this proposition is where the object in view is readily identifiable as contraband or as an object the possession of which is prohibited by law.

The officer who found the packages on the floor of petitioner's automobile testified that he searched it. (A. 36) Another officer present at the scene testified that a search was made of the car and two packages of white powder were found. (A. 43)

How the Illinois Court arrives at its view that no search was made defies understanding. Is not looking into an automobile and removing packages from it a search of it?

The prohibition of the Fourth Amendment is against unreasonable seizure as well as unreasonable search. An officer cannot reasonably be said to have obeyed the Fourth

Amendment because by looking into a person's property he could see packages, of then unknown content, before he reached into the property and seized the same.

The suggestion in Reason No. 1, that the packages of white powder were in "plain view", and that this fact either rendered the seizure from the automobile free from search, or that this fact rendered the seizure justifiable, also defies understanding. The white powder was not in "plain view", and the fact that the white powder was a narcotic was not known.

It thus appears that these considerations cannot justify the search of petitioner's automobile and do not affect its legality or illegality. This Court should render some expression to guide the state courts in their consideration of the real and important issues discussed above herein.

Respectfully submitted,

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APPENDIX A.

Opinion Of Supreme Court Of Illinois Sought To Be Reviewed.

Docket No. 37012—Agenda 23—May, 1962.

The People of the State of Illinois, Defendant in Error, v. Myles Harper, Plaintiff in Error.

Mr. Chief Justice Solfisburg delivered the opinion of the court:

Defendant Myles Harper was indicted for the unlawful possession of a narcotic drug, found guilty after a trial before the court, and sentenced to the penitentiary for a term of four to ten years. Defendant prosecutes this writ of error contending that the trial court erred in failing to suppress certain evidence, and that the record does not support his conviction.

It is undisputed that about 10:30 P.M. on October 11, 1960, the defendant was parked in a 1960 Cadillac convertible near 47th Street and South Park Avenue in Chicago. One Alean Walker first went to his car and was then taken into custody by the police when she crossed the street. She turned over to the police a small package containing white powder. Defendant then drove away and his car was found three or four minutes later about four blocks away in a parking lot with the motor running and lights on. Two packets of heroin were found in open view on the front floor of the automobile. Three days later the defendant surrendered to the police, but denied any knowledge of the two packets of heroin.

(Opinion)

Prior to his trial, defendant filed a verified motion to suppress evidence. In this motion defendant averred, *inter alia*, that on or about October 11, 1960, he was peacefully seated in his parked automobile at about 410 East 47th Street; that as he started his automobile and proceeded towards the intersection of 47th Street and South Parkway, an unknown man drew a revolver and shot at him, putting him in great fear; that an automobile pursued him and that he turned right on Prairie Avenue and into a parking lot and fled the scene on foot. He further averred that the men who followed him, and who later proved to be police officers, made a search of his automobile without a warrant and obtained, as a result of the search, a certain white powdered substance. Petitioner claimed that the white powdered substance was obtained as a result of an unlawful search and seizure and prayed that it be excluded as evidence and returned to him forthwith.

At the hearing on the motion to suppress evidence, police officer Emmons Russell testified that he arrested Alean Walker at 10:30 P.M. on October 11, 1960, in the vicinity of 47th Street and South Park in Chicago, immediately after he observed her talking with the defendant. He saw the defendant hand Walker a small package which she tucked in her waistband. After he took her into custody, he received the package from her and found it contained a white powder. He then signalled another police officer by hand and proceeded to attempt to apprehend the defendant. He testified that as he proceeded to cross the street, the defendant took off at high speed and ran a red light at South Park. He admitted that he drew his gun but did not shoot. Two squad cars were working in the area and the first car gave chase after the defendant. The

second car first picked up officer Russell and Miss Walker and then gave chase. They found defendant's car abandoned in a parking lot with the doors open and the ignition on, and also found two packages of white powder on the floor of the car.

William Massett, an inspector for the Division of Narcotic Control of the State of Illinois, and officer Clemie Paschal corroborated officer Russell's testimony substantially, although neither of them had seen the defendant hand the packet of white powder to Miss Walker.

The trial court denied the motion to suppress evidence and the cause was continued for trial. In the bench trial, the State again presented the testimony of officer Russell and narcotic inspector Massett regarding the transfer of the packet from defendant to Walker, the subsequent chase, and the discovery of the packets of white powder on the floor of the defendant's car. In addition Russell testified that he field-tested the packages found on the floor of defendant's car and obtained a positive reaction. He placed notations on them, inventoried them and took them to the police Crime Detection Laboratory for analysis. A qualified chemist at the laboratory, Andrew Principe, obtained the packets from the sealed envelope in the narcotics safe on October 12, 1960, analyzed them, and was of the opinion that the packets contained heroin.

Defendant presented his wife as a witness and she testified that she left home with defendant between 9 and 9:30 P.M. on October 11 and they stopped for a drink on 47th Street just off South Park. They then went into Walgreen's on the corner of 47th and South Park and bought cigarettes and thereafter got into their parked car. She testified that

she saw Miss W r come from a store and called to her. Whereupon W er leaned on the door and talked awhile. This was about 10:30 P.M. She testified that her husband did not hand Walker a package. After Miss Walker went back across the street, she and her husband drove to 47th and Prairie and parked in the parking lot. Her husband got out to purchase some liquor and she went to purchase barbecue. After she got the barbecue, she went to the liquor store to get her husband, but he continued to drink and she became angry and left about 12 or 12:30 A.M.

Defendant, testifying in his own behalf, repeated the same story and further testified that, after his wife left the liquor store, he looked for his car but it was not there and he then went to the Picadilly Lounge where he had more drinks. He stayed there, slept until 7:00 A.M., had a few more beers, and went home. He asked his wife what happened to the car and she said that she did not get it. Rather than calling the police, he called his attorney, who said that he would check the place where the stolen cars were. His attorney called him that evening and asked him to surrender to the police.

One Earl Shelby, a professional informer, was called to testify on defendant's behalf and stated that he had seen Alean Walker by appointment at 47th Street and South Park on October 11, 1960, and he gave her $160 and she gave him two "26's" of narcotics. He then saw her talking to officer Russell but did not see her talk to anybody in a car.

We first consider defendant's claim that the trial court erred in denying his motion to suppress and allowing the packets of white powder found in his car to be admitted

into evidence. He contends that the search revealing the white powder was illegal in that defendant was not arrested at the time of the search; that there was no probable cause for his arrest; and that the attempt to apprehend defendant was the result of an illegal search of Alean Walker.

The broad prohibitions of the State and Federal constitutions against unreasonable searches permit by implication all reasonable searches. However, neither the constitutions nor our decisions nor the decisions of the United States Supreme Court afford a fixed formula by which we may resolve every question of the reasonableness of a search. (*Go-Bart Importing Co.* v. *United States*, 282 U.S. 344, 75 L. ed. 374; *People* v. *Watkins*, 19 Ill. 2d 11) Our resolution of the question in the case at bar must depend upon the particular facts presented.

It appears that the heroin was found by the police in full view in an open abandoned car used by defendant in fleeing from the police. The police had previously observed the defendant hand a similar packet of white powder to Walker, a person the same police had previously arrested on a narcotic charge. We think it clear that the police had reasonable cause to pursue the defendant, and if possible, to arrest him. Nor do we believe it questionable, but that upon an arrest of the defendant under these circumstances the police could have searched him and the items in his immediate control. *People* v. *Watkins*, 19 Ill. 2d 11.

We do not think that the reasonableness of this search is changed by defendant's success in eluding the police. Upon finding the open car abandoned by the fleeing defendant, we think it reasonable that the police in the performance of their duties would look into the car to de-

termine if there were anything there to identify the defendant, or any paraphenalia of the suspected narcotic traffic.

It is clear that an abandoned motor vehicle does not have the same sanctity as a defendant's dwelling house in the constitutional field of search and seizure. (*People* v. *Tabet*, 402 Ill. 93, 100; cf. *People* v. *Grod*, 385 Ill. 584, 586.) In *People* v. *Exum*, 382 Ill. 204, we upheld the denial of a motion to suppress evidence of a key cutting machine and a camera observed by police on the front and rear seats of a defendant's car stating, "it is not a search to observe that which is open and patent."

We do not think that defendant's motive in fleeing the police, nor the legality of Miss Walker's arrest and search have any bearing on the reasonableness of the conduct of the police in this case. From all the facts and circumstances we do not believe that the packets of heroin were obtained by an illegal search, and hold that the motion to suppress was properly denied.

We next turn to defendant's contention that he was not proved guilty beyond a reasonable doubt. From the entire record we believe it clear that there was ample evidence of proper protective techniques in the analysis of the white powder found in defendant's car. The evidence clearly shows that officer Russell field tested the powder, found it positive, inventoried the two packets and took them in a sealed brown envelope to the crime laboratory the same night. The following morning the chemist stated that he opened the sealed envelope, which he removed from the safe, and made a determination that the white powder was heroin. While it is true that six other people had access to

the police safe, there is no indication or suggestion of any substitution, alteration or other tampering with the contents of the exhibit. We feel that a proper foundation was established to permit the introduction into evidence of the packets of white powder and their analysis. *People* v. *Norman*, 24 Ill. 2d 403; *People* v. *Polk*, 19 Ill. 2d 310; *People* v. *Harris*, 17 Ill. 2d 446.

We have also examined the record to determine if the evidence adduced proved that defendant had possession of the heroin found in his car. Contrary to the assertions of defendant we find the testimony of the police officers to be clear and unequivocal and the testimony of the defendant and his wife to be of doubtful credibility. We believe that the trial court could properly find from the evidence that defendant handed a packet of white powder to Miss Walker, that he thereafter fled alone in his car from the police, and left two packets of heroin in the car in the course of his flight. The heroin found in open view in his car three to four minutes after he fled to evade apprehension had been in the exclusive and immediate control of the defendant. The inference of guilty knowledge necessary to constitute possession is clear. *People* v. *Matthews*, 18 Ill. 2d 164.

From a review of the entire record we find that defendant was properly found guilty beyond a reasonable doubt and that the evidence used against him was not obtained by an unlawful search. The judgment of the criminal court of Cook County is therefore affirmed.

Judgment affirmed.

APPENDIX B.

Judgment Of Criminal Court Of Cook County, Illinois Sought To Be Reversed.

And afterwards, to-wit: on the ninth day of May in the year last aforesaid, it being the term of Court aforesaid, there being present Honorable Alexander J. Napoli, Judge of the Superior Court of Cook County, Illinois, and Ex-officio Judge of the Criminal Court of Cook County, Illinois. Daniel P. Ward State's Attorney, Frank G. Sain, Sheriff, and John J. Altman, Clerk.

The following among other proceedings were had and entered of record in said Court, which said proceedings are in words and figures following to-wit:

Gen. No. 60-3578

The People Of The State Of Illinois

vs.

Myles Harper

Indictment For Unlawful Possession Of Narcotic Drugs.

This day come the said People by Daniel P. Ward, State's Attorney and the said Defendant as well in his own proper person as by his Counsel also comes.

And the Court hearing the further testimony of Witnesses.

Stipulated Age of the said Defendant is now about thirty three (33) years.

State's Attorney, Counsel for the People now here Rests.

(Judgment)

And the Court hearing the further Testimony of Witnesses.

Counsel for the said Defendant now here rests.

And the Court being fully advised in the premises, doth Find the said Defendant Guilty of Possession of Narcotic Drugs in manner and form as charged in the indictment.

Counsel for said Defendant now here moves the Court for a New Trial in the foregoing entitled cause.

And the Court hearing Counsel for said Defendant in support of said Motion for a New Trial as well as the State's Attorney, Counsel for the People in opposition thereto and being fully advised in the premises doth Deny said motion and orders that said Motion be and the same is hereby Denied accordingly.

Counsel for said Defendant now here moves the Court in Arrest of Judgment in the above entitled cause.

And the Court hearing Counsel for said Defendant in support of said Motion in Arrest of Judgment as well as the State's Attorney, Counsel for the People in opposition thereto and the Court being fully advised in the premises doth Deny said Motion and Orders that said Motion be and the same is hereby Denied accordingly.

And Now Neither the said Defendant nor his Counsel for him saying anything further why the Judgment of the Court should not now be pronounced against him on the Finding Of Guilty heretofore entered and the Judgment rendered to the indictment in this cause.

Therefore, it is Considered, Ordered and Adjudged by the Court that the said Defendant Myles Harper, is Guilty of the said crime of Possession of Narcotic Drugs

(Judgment)

in manner and form as charged in the indictment in this cause, on the said Finding of Guilty.

Therefore, it is ordered and adjudged by the Court that the said Defendant Myles Harper be and he hereby is sentenced to the Illinois State Penitentiary for the crime of Possession of Narcotic Drugs in manner and form as charged in the indictment whereof he stands convicted for a term of years not less than Four (4) Years, nor more than Ten (10) Years, for the crime whereof he stands convicted, and it is further ordered and adjudged that the said Defendant Myles Harper be taken from the bar of the Court to the Common Jail of Cook County, and from thence by the Sheriff of Cook County to the Illinois State Penitentiary, and be delivered to the Department of Public Safety and the said Department of Public Safety is hereby required and commanded to take the body of the said Defendant Myles Harper and confine him in said Penitentiary, according to law, from and after the delivery thereof until discharged according to law, provided such term of imprisonment in said Penitentiary shall not be less than Four (4) Years, nor more than Ten (10) Years, for the crime for which the said Defendant was convicted and sentenced.

It Is Further Ordered that said Defendant pay all the costs of these proceedings, and that execution issue therefor.

On Motion of Counsel for said Defendant, it is ordered by the Court that the issuance of the Mittimus in this cause be and the same is hereby Stayed to and including June 8th, A.D., 1961.

It Is Ordered by the Court that the Same Bond To Stand.